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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

EILEEN GARCIA et al.,	
Plaintiffs and Appellants,	G039824
v.	(Super. Ct. No. 06CC10595)
STEVEN DICTEROW et al.,	O P I N I O N
Defendants and Respondents.	

Appeal from a judgment of the Superior Court of Orange County, Gregory Munoz, Judge. Affirmed.

Judicial Watch, Inc., Sterling E. Norris, Paul J. Orfanedes, and James F. Peterson for Plaintiffs and Appellants.

Rutan & Tucker, Philip D. Kohn, and Robert O. Owen for Defendants and Respondents.

* * *

In an action against the City of Laguna Beach and other defendants (collectively the City), plaintiffs Eileen Garcia and George Riviere sought (1) a "declaration that the City['s] expenditure of taxpayer funds and taxpayer-financed resources for the operation of [a day labor site] is unlawful, void, and a waste of taxpayer funds," and (2) "injunctive relief restraining and preventing the City . . . from expending any further taxpayer funds or taxpayer-financed resources for the operation of the [day labor site]." Plaintiffs contend the City's funding of the day labor site violates federal immigration law, alleging the City (1) refers unauthorized aliens for employment for a fee, (2) encourages them to reside in the United States, (3) provides them with prohibited public benefits, and (4) takes actions preempted by federal law. In a bench trial, the court entered judgment for defendants. We affirm.

FACTS

Plaintiffs are taxpayer residents of Laguna Beach, a municipal corporation. Laguna Beach and certain of its officers and employees are defendants in the case. In a bench trial, the parties submitted the matter on briefs and stipulated to a statement of facts with exhibits as "the complete set of facts upon which the parties shall base their legal arguments." The following facts are taken from the stipulated statement and exhibits.

In March 1993, "the City amended its Municipal Code to prohibit the solicitation of employment on any street, highway, public area, or non-residential parking area within the City, other than in an area specifically designated by resolution of the City Council for solicitation of employment." The City also "adopted a resolution formally designating an area on . . . Laguna Canyon Road as the City's day labor hiring area." The City thereby tried "to eliminate 'nuisances' associated with day laborer solicitation and locate it, in the City Manager's opinion, 'in a place that would be least offensive to people in the community.' In the City Manager's opinion, the nuisances included

trespassing on private property, littering, vandalism, disruption of businesses and residences, and interference with street traffic." After the establishment of the day hiring center, "[a]ccording to the City Manager, . . . the nuisances associated with the solicitation of employment City-wide . . . decreased substantially." The center became "known as the Laguna Beach Day Worker Center" (the Center).

The Center is located on land owned by the California Department of Transportation (CalTrans) and the Orange County Parks Department. In June 2006, after CalTrans demanded the removal of the Center, "the City agreed to . . . indemnify CalTrans for any losses or damages arising out of the City use of the property and entered into a lease with CalTrans for the property" at a rental rate of $420 per month. "Since 1993, the City has expended taxpayer funds and taxpayer-financed resources on the [Center], including but not limited to adding a driveway, fencing, landscaping, benches, a waterline, and drinking fountain as well as installing portable toilets and paying for trash pick up."

In a March 1999 memorandum, the City's director of community services summarized a meeting "requested by some of the day workers to resolve on-going problems at the Center." Four workers attended the meeting (as spokepersons for the day laborers) and recommended "that workers should be banned from the hiring area if they violate the safety rules [by] running across the street, standing outside of the hiring area, or rushing the cars," and "hoped the city would help with enforcement by supplying staff at the area."

Thereafter, "[b]eginning in approximately August 1999, the City of Laguna Beach has provided taxpayer funds, usually in the form of annual Community Assistance Grants, to the South County Cross Cultural Council ('South County'), a private non-profit, tax exempt organization which has used the funds to operate and manage the

[Center]."[1] Since 1999, the City has provided approximately $206,500 to South County. "In approximately 2000, South County placed a 'temporary' office structure" at the Center "to provide office space for the two South County employees who manage the Center."

"In order to use the Center, a day laborer must register to do so by completing a form and providing an address and telephone number and some form of identification." "Day laborers using the Center receive employment referral services from South County's on-site staff, who match day laborers' skills, English proficiency and wage requirements with the needs of the employers seeking to hire them." "South County also provides food distribution, medical check ups, health information, education, and at least some English language instruction to day laborers who use the Center." "[T]he Center ensures that employers pay the day laborers their wages."

"South County asks employers to pay $5 per visit to use the Center to hire day laborers. Approximately half of the employers choose to pay this sum. Those who do not pay are permitted to use the Center in the same manner as those who do pay. South County charges day laborers $1 per day to use the Center to obtain employment, although the $1 fee is refunded if the day laborer does not obtain employment on that day. [¶] A sign setting forth the amount charged to employers and day laborers is

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[1] In a February 2001 letter, the City's then mayor stated: "[T]he City has worked closely with [South County] to provide an area which is safe for the day workers and also for people who wish to hire temporary employees. The City provides restroom facilities, tables, benches, shade and other amenities for the benefit of the workers. The City also provides approximately $40,000 per year funding to [South County] to allow that organization to hire staff to coordinate the day worker hiring area." "I would like to invite you to visit Laguna Beach and meet with our staff and members of [South County] to discuss the City's ordinance and to observe our day laborer hiring area."

displayed prominently on a fence in front of the Center. [¶] The City is aware that South County asks for a fee to use the Center."[2]

South County does not, and is not required by the City to, "verify that day laborers who use the Center to obtain employment are eligible to work in the United States." The City has taken no "steps to determine whether day laborers using the Center are legally present in the United States and legally eligible for employment in the United States."[3] The "President and Executive Director of South County, is aware that some of the day laborers who utilize the Center to obtain employment may be undocumented aliens." The City's city manager "testified that at the time the Center was established in 1993 the City and the day laborers had an 'unspoken arrangement that we would not be calling in the INS [Immigration and Naturalization Service, workers are] cooperating by going to a location that's less of a problem, and we're cooperating by not calling INS.'" "As early as 1991, some City officials indicated that they did not want federal immigration officials called in to try to address the City's day laborer issues, and in 1999, the City's Chief of Police assured day laborers who use the Center that the City would not call in federal immigration officials." "According to a joint study published in January 2006 by the University of California at Los Angeles, the University of Illinois at Chicago, and the New School University, seventy-five percent (75%) of the day laborer work force consists of undocumented workers. The City was provided a copy of this study . . . before Plaintiffs filed this lawsuit." In 2006, plaintiff Garcia provided city

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[2] In an October 2003 letter, South County's chairman stated that "[b]eginning October 1, a $5 service fee will be charged to contractors and homeowners who hire labourers from the . . . Center. For the past two years, a $5 donation has been requested from employers, and $1 from workers; too often employers have claimed they are unable to make the contribution. From October 1, the fee will be mandatory."

[3] In a September 2007 newspaper article, the City's then city attorney stated: "While there may be anecdotal information [about illegal hires], the city has no such actual knowledge nor do they have an obligation to check that information."

"council members with copies of a report by the Center for the Study of Urban Poverty indicating that eighty-five percent (85%) of those persons seeking employment at day laborer sites are undocumented aliens." "The City also has received citizen complaints that the Center fosters illegal immigration." The City's police department has posted and distributed program guidelines and handouts at the Center "stating, in both English and Spanish: [¶] 'The Laguna Beach Police Department wants to help you find work. We need your assistance and cooperation in helping us to keep this area [a] safe place to be hired by contractors, homeowners and others. [¶] . . . [¶] The City of Laguna Beach wants you and your family and friends to be a part of the community and to enjoy a healthy quality of life. . . . We want to help you find work so that you can stay here or send money to your loved ones back home."

The court ruled plaintiffs failed to show the City's expenditures are illegal under title 8 of the United States Code sections 1324a, 1324, or 1621; therefore plaintiffs were *not* entitled to an injunction under Code of Civil Procedure section 526a restraining illegal expenditures of City funds.[4]

DISCUSSION

Under Code of Civil Procedure section 526a, a taxpayer resident of a city may bring an action to restrain "any illegal expenditure" of city funds. Thus, section 526a enables a taxpayer to challenge "illegal government action that otherwise would go unchallenged because of standing requirements." (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 714.) "To state a claim, the taxpayer must allege specific facts and reasons for the belief the expenditure of public funds sought to be enjoined is illegal."

[4] The court also ruled plaintiffs were *not* entitled to an injunction under Code of Civil Procedure section 526a because they failed to show the City wastes funds. On appeal plaintiffs do not challenge this part of the court's ruling.

(*Ibid.*) "General allegations, innuendo, and legal conclusions are not sufficient [citation]; rather, the plaintiff must cite specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240.)

Plaintiffs allege "the City's use of taxpayer resources to operate the Center" is an illegal expenditure that violates three federal statutes "proscribing the employment of undocumented aliens" — title 8 of the United States Code sections 1324a, 1324, and/or 1621.[5] We discuss plaintiffs' contentions with respect to each statute individually before moving to their federal law preemption claim.

Because the facts are undisputed, we review de novo the trial court's ruling the City made no illegal expenditures enjoined by Code of Civil Procedure section 526a. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

The City Does Not Refer Unauthorized Aliens for Employment for a Fee in Violation of Section 1324a

Under section 1324a, a person or entity is prohibited from referring "for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien."[6] (§ 1324a(a)(1)(A).) The statute prescribes civil and/or misdemeanor criminal penalties. (§ 1324a(e)(4) [cease and desist order with civil money penalty] and (f)

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[5] All further statutory references are to title 8 of the United States Code unless otherwise stated.

[6] "The term entity means any legal entity, including . . . a . . . governmental body . . . ." (8 C.F.R. § 274a.1(b) (2008).) "The term refer for a fee means the act of sending or directing a person . . . to another, directly or indirectly, with the intent of obtaining employment in the United States for such person, for remuneration . . . ." (8 C.F.R. § 274a.1(d) (2008).) "[T]he term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General." (§ 1324a(h)(3).)

[criminal penalties and injunctions for pattern or practice violations, including imprisonment of not more than six months].)

Plaintiffs allege "the City, by and through the Center, is providing employment referrals to persons unauthorized to work in the United States," and as such, "is in direct violation of . . . section 1324a." Defendants counter that the City itself does not provide employment referrals or receive any fees, and deny that the City and South County are a single entity.

Without citing any legal authority to support their contention, plaintiffs assert South County is the City's agent for purposes of operating the Center. The court, by finding South County's knowledge cannot be imputed to the City, impliedly found South County is not the City's agent. But we are not bound by that finding. Although the existence of an agency relationship is generally a factual question, when the essential facts are undisputed, the issue is one of law. (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp*. (2007) 148 Cal.App.4th 937, 965.) "[T]he burden of proving agency, as well as scope of the agent's authority, rests upon the party asserting the existence thereof and seeking thereby to charge the principal upon representations of the agent . . . ." (*California Viking Sprinkler Co. v. Pacific Indem. Co.* (1963) 213 Cal.App.2d 844, 850.)

"An agent is one who represents another, called the principal, in dealings with third persons." (Civ. Code § 2295.) "'An agency is proved by evidence that the person for whom the work was performed had the right to control the activities of the alleged agent." (*Van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 572.) "'In the absence of the essential characteristic of the right of control, there is no true agency. . . .'" (*Ibid*; see also *Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579 [primary determinative factor is whether the principal "'has the legal right to control the activities of the alleged agent'"].) "'Proof of an agency relationship may be established by "evidence of the acts of the parties and their oral and written communications."'"

(*Van't Rood*, at p. 573.) In addition, "[a]gency may be implied from the circumstances and conduct of the parties . . . ." (*Michelson*, at p. 1579.)

In support of their argument that South County is the City's agent, plaintiffs assert "the City is aware of and condones [the] unlawful hiring [of undocumented aliens] and . . . is intentionally facilitating it by supporting and funding the Center." They argue that because the City pays for the Center's rent and staff, and provides "other necessary financial and material support," it cannot plausibly claim "that it has no control over 'any decisions concerning management of the Center' and has 'no say over whether or not the Center charges workers or employers a fee, whether the Center requires workers to provide identification, or whether the Center attempts to verify workers' legal immigration status.' [Citation.] The reality is that [the] City is inextricably tied to the Center, and [South County] is the agent through which the City operates the Center." Plaintiffs also stress the City created the Center and promised day laborers it would not call in the INS.

But plaintiffs provide no evidence the City has any legal right to control South County. Although the City does fund South County with an annual grant, there is no evidence in South County's grant application for the fiscal year 2007 through 2008, or anywhere else in the stipulated facts and exhibits, of any "strings" attached to the grant. Having failed to show the "'essential characteristic of the right of control,'" plaintiffs have not met their burden of proof to show South County is the City's agent. (*Van't Rood v. County of Santa Clara*, *supra*, 113 Cal.App.4th at p. 572.)

Nonetheless, plaintiffs argue "[i]t is a fundamental precept of law that government may not do indirectly what the law does not allow to be done directly," relying on *Carmell v. Texas* (2000) 529 U.S. 513, 541 ("'for what cannot be done directly cannot be done indirectly'") and *Rossi v. Brown* (1995) 9 Cal.4th 688, 723 ("what cannot be done directly cannot be done indirectly"). But this formulation of the argument is just another way of saying "what cannot be done directly by government officials may not be

done indirectly through private party agents." Because plaintiffs have not proved South County is the City's agent, they correspondingly have not shown the City acts indirectly to illegally refer unauthorized aliens for employment for a fee.

The City Does Not Encourage Illegal Aliens to Enter or Reside in the United States in Violation of section 1324(a)(1)(A)(iv)

Under section 1324(a)(1)(A)(iv), any "person" who "encourages . . . an alien to come to . . . or reside in the United States, knowing or in reckless disregard of the fact that such coming to . . . or residence is or will be in violation of law" is subject to criminal penalties. Under sections 1324(a)(1)(A)(i) – (iii) and 1324(v)(I) and (II), other prohibited actions punishable with criminal sanctions are: bringing to, transporting within, or harboring in the United States an illegal alien under specified circumstances, or engaging in a conspiracy to commit or aiding or abetting the commission of any of the preceding acts.[7] Section 1324(a)(1)(B) provides for felony punishment (in the form of a

[7] Section 1324(a)(1)(A) provides: "Any person who — [¶] (i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien; [¶] (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; [¶] (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; [¶] (iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or [¶] (v)(I) engages in any conspiracy to commit any of the preceding acts, or [¶] (II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B)."

fine, imprisonment for a term ranging from five years to life, depending upon the offense, or both) for a violator "for each alien in respect to whom such a violation occurs."

Plaintiffs argue the City, by "operating and underwriting a marketplace where undocumented aliens can offer their unlawful labor to employers," encourages such aliens to illegally reside in the United States. They stress "that employment is the magnet that attracts illegal aliens to come to and reside in this country." They contend "the City has sought to assist day laborers to find employment at the Center despite actual or constructive knowledge that they were likely to be undocumented aliens." They point, for example, to the guidelines and handouts posted and distributed at the Center by the City's police department "stating, in both English and Spanish: [¶] 'The Laguna Beach Police Department wants to help you find work. We need your assistance and cooperation in helping us to keep this area [a] safe place to be hired by contractors, homeowners and others. [¶] . . . [¶] The City of Laguna Beach wants you and your family and friends to be a part of the community and to enjoy a healthy quality of life. . . . We want to help you find work so that you can stay here . . . ."

In *U.S. v. Oloyede* (4th Cir. 1992) 982 F.2d 133 (*Oloyede*), the defendants were convicted under a predecessor statute section 1324(a)(1)(A)(IV) "of a scheme to defraud the [INS] by falsifying documents for citizenship applications . . . ." (*Oloyede*, at pp. 135; Annot. (2008) 137 A.L.R. Fed. 227, § 2.) One defendant "sold false employment, social security and other supporting documents to illegal aliens and referred the aliens to [the other defendant, an immigration lawyer,] for preparation of their INS applications." (*Oloyede*, at p. 135.) "Eight of [the lawyer's] clients, all illegal aliens, were arrested for submitting fraudulent documents in support of their citizenship applications." (*Ibid.*) The evidence showed defendants offered to sell the aliens "a legal status they could not otherwise obtain," and the aliens paid defendants for the fraudulent immigration applications. (*Id.* at p. 136.) In the process of affirming the defendants' convictions, the circuit court focused on the term "encourage" in the statute, noting that

the district court had "turned to Black's Law Dictionary which defines 'encourage' to include actions taken to embolden or make confident." (*Id.* at p. 136.) The circuit court stated: "'[E]ncouraging' relates to actions taken to convince the illegal alien to come to this country or to stay in this country. [The defendants'] actions reassured their clients that they could continue to work in the United States, that they would not be subject to the threat of imminent detection and deportation, and that they could travel back to their homeland without risk of being prevented from returning, thus providing all of the benefits of citizenship. The selling of fraudulent documents and immigration papers under these circumstances constitutes 'encourages' as that word is used in the statute." (*Id.* at p. 137.)

Similarly, in *U.S. v. Ndiaye* (11th Cir. 2006) 434 F.3d 1270 (*Ndiaye*), the court stated: "A jury could find that [the defendant's] assistance in helping [a named alien] obtain a Social Security card, which the evidence established he is not entitled to have, encouraged or induced him to reside in this country in violation of the statute." (*Id*. at p. 1298.)

Relying on the above cases, plaintiffs argue the City's "violation is more egregious than merely providing documentation that assists undocumented aliens in finding employment." They contend "the City is doing directly what the defendants in *Oloyede* [and] Ndiaye . . . did only indirectly — helping illegal aliens find employment."

But the *Oloyede* and *Ndiaye* defendants did more than simply help illegal aliens find employment. Rather, they sold the aliens false documents which encouraged the aliens to believe they could live and work in the United States without fear of deportation. In contrast, the City, although it promises not to summon the INS to the Center, cannot and does not promise aliens it can shield them from deportation. (Indeed, by requiring workers to congregate in a single location, the City has arguably created a more attractive target for the INS.) Nor has the City, by creating the Center and requiring workers to use it, necessarily enhanced their chances of obtaining employment. The

single location may have increased competition among the congregated workers, resulting, for example, in laborers "rushing the cars." Without the Center, smaller clusters of workers would undoubtedly gather in various places known to prospective employers. We conclude the City's creation and funding of the Center does not rise to the level of "encouraging" prohibited by the statute.

Two more factors reinforce our conclusion. First, plaintiffs identify no named illegal aliens or even a specific number of particular unnamed but known illegal aliens who have obtained employment through the Center. Yet the statute prescribes punishment "for each alien in respect to whom such a violation occurs," thus contemplating the involvement of a particular known alien or aliens.[8] (§ 1324(a)(1)(B).) Although plaintiffs contend the statute does not require "that a specific individual alien be identified," relying on *U.S. v. Khanani* (11th Cir. 2007) 502 F.3d 1281 (*Khanani*), *Khanani* involved "named, unauthorized aliens . . . ." (*Id.* at p. 1286.)

Secondly, section 1324a (discussed in the preceding portion of this opinion) specifically governs employment and referral for employment of illegal aliens, and is a misdemeanor statute. (*U.S. v. Moreno-Duque* (D.Vt. 1989) 718 F.Supp. 254, 256 (*Moreno-Duque*).) In contrast, section 1324 at issue here (governing, inter alia, encouraging aliens to reside in this country), is a felony statute. (*Khanani*, *supra*, 502 F.3d at p. 1288.) As we concluded in the preceding portion of this opinion, the City's

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[8] "At one time, courts disagreed as to how this language should be interpreted — whether there should be a separate count in the indictment for each alien involved, and a separate sentence imposed for each count upon which the defendant was convicted; or whether there should be a single count for all the aliens involved, with a single sentence of appropriate length imposed upon conviction of the defendant. In current practice, the increase in the penalty for transporting more than one alien is controlled by the Sentencing Guidelines. United States Sentencing Guideline § 2L1.1(b)(2) (U.S.S.G. § 2L1.1 subref= '(b)(2)') provides for an increase of 2 levels if the offense involved 6 to 24 aliens, an increase of 4 levels if the offense involved 25 to 99 aliens, and an increase of 6 levels if the offense involved 100 or more aliens." (Annot., *supra*, 137 A.L.R. Fed. 227, § 2, fn. omitted.)

conduct does not constitute referral for employment for a fee prohibited under section 1324a. It would be incongruous, and require an amorphous definition of "encouraging," to hold the City's conduct is prohibited under the felony statute but not under the misdemeanor statute more precisely targeted to the facts at hand. (See *Moreno-Duque, supra,* at p. 259 ["we cannot say that Congress intended the incongruous result of treating some employers as felons, and others as misdemeanants" for the same conduct].) Plaintiffs, relying on *Khanani*, argue that merely employing illegal aliens can constitute prohibited "encouraging." But in *Khanani*, the defendants did more than simply employ illegal aliens: "[T]he defendants created a work environment that was well known in the alien community as being open to and safe for workers not authorized to work in the United States. [The defendants] shielded their unauthorized workforce from detection, by alerting the aliens to the presence of immigration officials in the stores, by instructing workers not to wear name tags, and by sending them home or to other locations undetected. Unauthorized aliens enjoyed housing assistance as well." (*Khanani, supra,* 502 F.3d at p. 1294.)

In a footnote, plaintiffs raise the alternative argument that the City aids and abets South County and "scofflaw employers" to encourage illegal aliens to reside in this country, and therefore the City's conduct violates section 1324(a)(1)(A)(v)(II). "The elements necessary to convict an individual under an aiding and abetting theory are (1) that the accused had the specific intent to facilitate the commission of a crime by another, (2) that the accused had the requisite intent of the underlying substantive offense, (3) that the accused assisted or participated in the commission of the underlying substantive offense, and (4) that someone committed the underlying substantive offense." (*U.S. v. Gaskins* (1988) 849 F.2d 454, 459.) As discussed above, plaintiffs failed to prove the City encourages, or intends to encourage, illegal aliens to reside in the United States. Thus, they have not met their burden of proof to show the second element of aiding and

abetting, i.e. that the City harbored the requisite intent of the underlying substantive offense.

In sum, the City does not encourage illegal aliens to reside within the United States in contravention of section 1324(a)(1)(A)(iv) or 1324(a)(1)(A)(v)(II).

The City Does Not Provide a Public Benefit to Aliens Ineligible to Receive Such Benefits Under Section 1621

Under section 1621, illegal aliens are generally ineligible to receive any "local public benefit." Such benefits are defined generally in section 1621(c) to include any grant provided by a local government or "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a . . . local government." (§ 1621(c)(1)(B).)

Plaintiffs argue the City violates section 1621 because South County provides benefits to undocumented aliens, *and* South County is the City's agent. As discussed above, plaintiffs have not met their burden of proof to show South County is the City's agent and therefore their section 1621 contention fails.

The City's Actions Are Not Preempted by Federal Immigration Law

Plaintiffs argue that under "the well-established federal preemption doctrine, a locality is prohibited from taking actions which . . . undermine or frustrate federal law." Plaintiffs overstate the preemption doctrine, which does not apply to all actions of a state or locality but only to its laws and regulations: "As to preemption generally, the law is as follows." "'[S]tate law that conflicts with federal law is "without effect."'" (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 147.) Because plaintiffs argue the

City's *conduct*, i.e. its support of the Center, is preempted by federal law, as opposed to any specific ordinance, they fail to state a preemption claim.[9]

DISPOSITION

The judgment is affirmed. Defendants shall recover their cost on appeal.

IKOLA, J.

WE CONCUR:

SILLS, P. J.

MOORE, J.

[9] Plaintiffs rely, inter alia, on *Hoffman Plastics Compounds, Inc. v. N.L.R.B.* (2002) 535 U.S. 137, but that case involved the National Labor Relations Board's lack of discretion under the National Labor Relations Act to award back pay to an undocumented alien. (*Id.* at pp. 141-143.)